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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	Case No. 18-CR-00258 EJD
)	
Plaintiff,)	UNITED STATES' PRETRIAL CONFERENCE
)	STATEMENT
v.)	
)	Date: January 14, 2021
RAMESH BALWANI,)	Time: 9:00 a.m.
)	Court: Hon. Edward J. Davila
Defendant.)	
)	
)	

Pursuant Criminal Local Rule 17-1-1(b), the parties respectfully submit the following Pretrial Conference Statement.

1. Disclosure and Contemplated Use of Statements or Reports of Witnesses Under the Jencks Act, 18 U.S.C. § 3500, or Fed. R. Crim. P. 26.2

The United States has conducted a thorough search for statements subject to the Jencks Act, 18 U.S.C. § 3500, and Federal Rule of Criminal Procedure 26.2 and has produced all such statements identified to date. The government will continue to produce any Jencks/Rule 26.2 material it obtains, generates, or subsequently identifies.

2. Disclosure and Contemplated Use of Grand Jury Testimony of Witnesses Intended to Be Called at the Trial

The United States has produced all Grand Jury testimony of witnesses intended to be called at the trial.

3. Disclosure of Exculpatory or Other Evidence Favorable to the Defendant on the Issue of Guilt or Punishment

The United States has conducted a thorough search for information discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny and produced all such information identified to date. The government acknowledges its ongoing obligations under *Brady*. The government will continue to produce any *Brady* and *Giglio* material it obtains, generates, or subsequently identifies.

4. Stipulation of Facts Which May Be Deemed Proved at the Trial Without Further Proof By Either Party and Limitation of Witnesses

The government intends to propose evidentiary stipulations for Defendant to consider. The government is seeking stipulations that certain communications or wire transfers were “interstate wire communications” and that emails bearing certain Bates prefixes produced by Theranos are true and correct copies of emails sent or received by Theranos personnel. The government anticipates seeking further stipulations regarding the authenticity of records produced in the underlying investigation. At this time, the parties have not finalized stipulations to present to the Court. In the event the parties reach agreement, the stipulations will be reduced to writing, signed by the parties, filed with the Court, and published to the jury at the appropriate time during the course of the trial.

1 **5. Appointment By the Court of Interpreters Under Fed. R. Crim. P. 28**

2 The government is not aware of any need for interpreters in this case.

3 **6. Dismissal of Counts and Elimination from the Case of Certain Issues, e.g., Insanity,**
 4 **Alibi, and Statute of Limitations**

5 Defendant filed or joined six motions to dismiss the Second and Third Superseding Indictments,
 6 which were denied on October 13, 2020. ECF No. 552 at 11, 14, 18, 22, 24, 27, 28.

7 **7. Joinder Pursuant to Fed. R. Crim. P. 13 or the Severance of Trial As to Any Co-**
 8 **Defendant**

9 On March 20, 2020, the Court ordered severance of the trials of Defendant and Elizabeth
 10 Holmes, who is also named in the operative indictment. ECF No. 362.

11 **8. Identification of Informers, Use of Lineup or Other Identification Evidence and**
 12 **Evidence of Prior Convictions of Defendant or Any Witness, Etc.**

13 The United States did not use “informers,” as it understands the term, during the criminal
 14 investigation of the conduct that gave rise to the Third Superseding Indictment. The United States did
 15 not use a “lineup” in the investigation of the conduct that gave rise to the Third Superseding Indictment.
 16 The government anticipates numerous witnesses will identify the Defendant and that there will be no
 17 meaningful dispute about identification at the trial. The government is unaware of prior convictions of
 18 Defendant or witnesses that might serve as a proper basis for impeachment; in the event it learns of any
 19 it will make appropriate disclosures.

20 **9. Pretrial Exchange of Lists of Witnesses Intended to Be Called in Person or By**
 21 **Deposition to Testify at Trial, Except Those Who May Be Called Only for**
 22 **Impeachment or Rebuttal**

23 On November 5, 2021, the United States served a witness list.

24 On November 12, 2021, the Defendant served a witness list.

25 **10. Pretrial Exchange of Documents, Exhibits, Summaries, Schedules, Models or**
 26 **Diagrams Intended to Be Offered or Used at Trial, Except Materials That May Be**
 27 **Used Only for Impeachment or Rebuttal**

28 On November 21, 2021, the United States served an exhibit list. The government respectfully
 reserves the right to amend its list further prior to and during the trial, if necessary. The government will
 provide the Court with all pre-marked exhibits as the Court directs and respectfully recommends that the

exhibits be provided electronically given the volume. The government also respectfully recommends exhibits be provided to the Court and the defense in binders relevant to specific witnesses shortly before each witness's testimony. The United States continues to prepare summaries, diagrams, and demonstrative exhibits in anticipation of trial, and will share them with defense counsel as they are completed.

11. Pretrial Resolution of Objections to Exhibits or Testimony to Be Offered at Trial

On May 21 and 22, 2021, the Court issued orders on motions *in limine* in the Holmes matter. E.g., ECF Nos. 797 & 798. The parties in this matter have filed motions *in limine* which currently are scheduled for hearing at the pretrial conference on January 14, 2022. The government anticipates working with defense counsel to resolve further objections to exhibits and testimony before bringing any matters to the attention of the Court.

12. Preparation of Trial Briefs on Controverted Points of Law Likely to Arise at Trial

Given the Court's familiarity with the case and the legal issues, the government does not plan to submit a trial brief before the trial starts, unless the Court requests or requires otherwise. To the extent controverted issues arise during trial, the government reserves the right to present short briefs to aid the Court's resolution of such issues.

13. Scheduling of the Trial and of Witnesses

The government is considering ways to complete its case-in-chief in less time than the *Holmes* trial.

14. Request to Submit Questionnaire for Prospective Jurors Pursuant to Crim. L.R. 24-1, Voir Dire Questions, Exercise of Peremptory and Cause Challenges and Jury Instructions

On December 21, 2021, the government filed its proposed jury instructions and jury verdict form. ECF Nos. 804, 805, & 802. That same day, Defendant filed his proposed jury instructions. ECF Nos. 1210. The parties also have submitted proposed juror questionnaires. The government respectfully requests the opportunity to review and comment on any questionnaire the Court elects to employ, and to present objections to Defendant's proposed jury instructions.

15. Any Other Matter Which May Tend to Promote a Fair and Expeditious Trial

1 The government will work with defense counsel and with witnesses and the Court to ensure the
2 safety of all participants in the trial and compliance with the Court's standing orders regarding health
3 protocols in light of the COVID-19 pandemic. The government also will work with defense counsel to
4 resolve other matters in an effort to promote a fair and expeditious trial and will bring timely to the
5 Court's attention matters on which the parties disagree.

6 DATED: January 7, 2022

Respectfully submitted,

7 STEPHANIE M. HINDS
8 United States Attorney

9 /s/
10 _____
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